

April 12, 2019

TO: ALL SCHOOL DISTRICTS AND OTHER INTERESTED PARTIES

TITLE 2. STATE ALLOCATION BOARD

NOTICE OF PROPOSED REGULATORY ACTION

THE STATE ALLOCATION BOARD PROPOSES TO  
ADOPT REGULATION SECTIONS 1860 THROUGH 1860.21,  
INCLUDING ASSOCIATED FORMS AND GRANT AGREEMENT,  
TITLE 2, CALIFORNIA CODE OF REGULATIONS, RELATING TO  
THE FULL-DAY KINDERGARTEN FACILITIES GRANT PROGRAM

REGULATION SECTIONS PROPOSED FOR ADOPTION:

- 1860.1, 1860.2, 1860.3, 1860.4, 1860.5, 1860.6, 1860.7, 1860.8, 1860.9, 1860.10, 1860.10.1, 1860.10.2, 1860.10.3, 1860.11, 1860.12, 1860.13, 1860.14, 1860.15, 1860.16, 1860.17, 1860.18, 1860.19, 1860.20, AND 1860.21

FORMS PROPOSED FOR ADOPTION:

- *Application for Funding*, Form SAB 70-01 (New 10/18), referenced in Regulation Section 1860.2
- *Fund Release Authorization*, Form SAB 70-02 (New 10/18), referenced in Regulation Section 1860.2
- *Expenditure Report*, Form SAB 70-03 (New 10/18), referenced in Regulation Section 1860.2
- *Grant Agreement*, (New 10/18), referenced in Regulation Section 1860.2

NOTICE IS HEREBY GIVEN that the State Allocation Board (SAB) proposes to adopt the above-referenced regulation sections, including associated forms and grant agreement, contained in Title 2, California Code of Regulations (CCR). A public hearing is not scheduled. A public hearing will be held if any interested person, or his or her duly authorized representative, submits a written request for a public hearing to the Office of Public School Construction (OPSC) no later than 15 days prior to the close of the written comment period. Following the public hearing, if one is requested, or following the written comment period if no public hearing is requested, OPSC, at its own motion or at the instance of any interested person, may adopt the proposals substantially as set forth above without further notice.

AUTHORITY AND REFERENCE CITATIONS

The SAB is proposing to adopt the above-referenced regulation sections under the authority provided by Sections 17280, 17375, 17375(a), 17375(b), 17375(b)(2), 17375(b)(2)(A), 17375(b)(3), 17375(c), 17375(e), 17375(f), 17375(g), 17375(h) of the Education Code; 16304 and 16304.1 of the Government Code. The proposals interpret and make specific reference

Sections 8973, 17070.15, 17072.10(b), 17072.10(d), 17072.10(e), 17074.10(e), 17075.10, 17280, 17375, 17375(a), 17375(b), 17375(b)(2), 17375(b)(2)(A), 17375(b)(2)(B), 17375(b)(3), 17375(c), 17375(d), 17375(e), 17375(f), 17375(g), 17375(h), 41024, and 42238.01 of the Education Code; 1771.3 and 1771.5, Labor Code.

## INFORMATIVE DIGEST/POLICY OVERVIEW STATEMENT

Assembly Bill (AB) 1808, Chapter 32, Statutes of 2018 (Committee on Budget, Education Finance: Education Omnibus Trailer Bill), established the Full-Day Kindergarten Facilities Grant Program (FDKFGP). The FDKFGP allows school districts that lack the facilities to provide full-day kindergarten to apply for one-time grants to construct new school facilities or retrofit existing school facilities for the sole purpose of providing full-day kindergarten classrooms. At its meeting on October 24, 2018, the SAB adopted regulations on an emergency basis to implement the FDKFGP. The emergency regulations were approved by the Office of Administrative Law and filed with the Secretary of State on December 14, 2018.

### Funds Impacted

- General Fund appropriation in the amount of \$100,000,000

Attached to this Notice is the specific regulatory language of the proposed emergency regulations, including three forms. The *Grant Agreement*, will not be included because the document is very large. However, the proposed regulations, forms and the *Grant Agreement* will be accessible and can be reviewed on OPSC's website at:

<https://www.dgs.ca.gov/OPSC/Resources> and scroll down to Laws and Regulations for State Allocation Board-Administered Programs. Copies of the proposed regulations, forms and *Grant Agreement* will be mailed to any person requesting this information by using OPSC's contact information set forth below in this Notice. The proposed regulations implement the FDKFGP Regulations under the California Code of Regulations, Title 2, Chapter 3, Subchapter 4, Group 1, State Allocation Board, Subgroup 5.8, Regulations relating to the Full-Day Kindergarten Facilities Grant Program.

### Background and Problem Being Resolved

In a recent survey performed by the California Department of Education (CDE), school districts cited lack of facilities as the main reason for not offering full-day kindergarten instruction. AB 1808, the Education Finance: Education Omnibus Trailer Bill was approved by the Governor and chaptered June 27, 2018. This bill appropriated \$100,000,000 from the General Fund for the 2018/2019 fiscal year to the SAB to provide one-time grants to school districts to construct new school facilities or retrofit existing school facilities for the purpose of providing full-day kindergarten classrooms. A "full-day kindergarten classroom," for the purposes of this bill, must satisfy the design requirements required for new kindergarten classrooms as specified in paragraph (2) of subdivision (h) of Section 14030 of Title 5 of the California Code of Regulations.

OPSC, on behalf of the SAB, conducted three stakeholder meetings to develop and refine the criteria for providing grants to school districts under the FDKFGP. Proposed FDKFGP projects must increase the number of kindergarten classrooms meeting current kindergarten design requirements at the site by either the addition of a classroom(s) to an existing school site or by retrofitting an existing facility that is not currently designed as a kindergarten classroom. This is

a self-certification program and the projects must provide classrooms to house existing kindergarten students, not add capacity to bring new students to the school site.

OPSC performed a search on whether the proposed regulations were consistent and compatible with existing State laws and regulations. After performing the search, OPSC, on behalf of the SAB, has determined that AB 1808, Chapter 32, Education Finance: Education Omnibus Trailer Bill, was created because there are no other programs or regulations that address the lack of kindergarten facilities. Therefore, the proposed regulations are determined to be consistent and compatible with existing State laws and regulations. Proceeding with the implementation of the FDKFGP regulations, the three forms and the grant agreement templates, will enhance applicants' awareness when partnering with the State while defining the responsibilities of funding applicant projects. This will ensure program oversight and expenditure accountability.

#### *Anticipated Benefits of the Proposed Regulations*

The proposed regulations promote the State's general welfare, including protection of public health and safety, by assisting in increasing the State's infrastructure investment of school facilities. The proposed regulations also promote fairness and/or social equity by providing one-time general fund funding to those school districts that may be able to construct new facilities or retrofit existing facilities in an effort to provide kindergarten facilities.

Many aspects of the FDKFGP are based on similarities in the Leroy F. Greene School Facilities Act of 1998 (School Facility Program), such as state share/district share funding of projects, Financial Hardship, site acquisition guidelines, etc. just to name a few. The School Facility Program is a \$42 billion voter-approved school facilities construction program. Although the FDKFGP is not the primary school facilities construction program, it does provide funding dedicated to construction of new facilities and/or retrofit of existing facilities for kindergarten classrooms only.

The proposed regulations are therefore determined to be consistent and compatible with existing State laws and regulations. As stated above, OPSC performed a search on whether the proposed regulations were consistent and compatible with existing State laws and regulations. After performing the search, OPSC, on behalf of the SAB, has determined that AB 1808, Chapter 32, Education Finance: Education Omnibus Trailer Bill, was created because there are no other programs or regulations that address the lack of kindergarten facilities. Therefore, the proposed regulations are determined to be consistent and compatible with existing State laws and regulations. Proceeding with the implementation of the FDKFGP regulations, the three forms and the grant agreement templates, will enhance applicants' awareness when partnering with the State while defining the responsibilities of funding applicant projects. This will ensure program oversight and expenditure accountability.

These proposed regulations may have a positive impact to various business, manufacturing, and construction-related industries such as architecture, engineering, trades and municipalities, along with the creation of an unknown amount of jobs. The proposed regulations may also provide a positive impact to the creation of jobs, the creation of new businesses, and the expansion of businesses in California. It is not anticipated that the proposed regulations will result in the elimination of existing businesses or jobs within California.

### Summary of the Proposed Regulatory Amendments

A summary of the proposed regulations is as follows:

Proposed adoption of Regulation Section 1860 states the purpose of the regulations, which is to implement the FDKFGP. Full-day kindergarten is defined in Education Code Section 8973, which specifies that full-day kindergarten instruction exceeds four hours but does not exceed the length of the primary school day and that full-day kindergarten instruction must provide appropriate educational instruction composed of both active and quiet activities.

Proposed adoption of Regulation Section 1860.1 charges the Director of General Services with providing assistance to the SAB as necessary, pursuant to Government Code Section 15490(c). This Section also charges the Director, or his or her legal designee, with performing all acts necessary to implement the program whenever possible. This allows OPSC, as staff to the Director, to assist in the implementation of the program.

Proposed adoption of Regulation Section 1860.2 represents a set of defined words and terms used exclusively for these regulations. These definitions provide clarity to OPSC and school districts on program concepts and requirements.

Proposed adoption of Regulation Section 1860.3 sets forth general requirements that all school districts seeking program funding must meet. Specifically, participating school districts are required to complete and file with OPSC the Form SAB 70-01, *Application for Funding*, (which is incorporated by reference), and all required documents as identified in the Specific Instructions section of the Form SAB 70-01. This regulation also specifies that school districts may only apply for program funding for a project that entered into a construction contract on or after the program start date, June 27, 2018.

Proposed adoption of Regulation Section 1860.4 provides general funding guidelines for the program that apply to all school districts that participate in the program. Government Code Section 16304 states in part that all program funds must be encumbered by the SAB by June 30, 2021. The Program will not operate beyond 2021 as no additional General Fund dollars will be appropriated for purposes of the Program. This Section clarifies that any funds returned prior to this date will be returned to the program account, while funds returned after this date will be returned to the General Fund.

Proposed adoption of Regulation Section 1860.5 sets forth several criteria that all school districts must meet in order to apply for program funding. School districts will be required to provide a school board resolution providing approval to provide full-day kindergarten instruction at the project school site at completion of the project, pursuant to Education Code Section 8973. Additionally, school districts will be required to prove that they currently lack full-day kindergarten facilities, which is defined as the project site having an existing kindergarten pupil population that exceeds the current state loading standard of 25 kindergarten pupils per kindergarten classroom. Statute does not provide the SAB the ability to provide funding for classrooms for projected kindergarten students. This Section also requires school districts to provide a description of the proposed project that contains certain criteria. OPSC will use this information in order to determine if the school district is eligible to receive program funding and, if so, for what types of funding the school district will qualify.

Proposed adoption of Regulation Section 1860.6 sets forth the application submittal process, which authorizes the SAB to establish two 30-calendar day funding rounds for school districts to

request apportionments of available program funds. The first funding round would begin January 2, 2019 and end January 31, 2019. The second funding round would begin May 1, 2019 and end May 30, 2019. A two-round system will allow the SAB to promptly expend the funds by the statute driven deadline of June 30, 2021. Any applications that do not receive an apportionment during each round will be returned to the school district. The two-round system will also provide more time for school districts to plan and prepare a project submittal so as to encourage full participation in the program. School districts that do not receive funding in the first round may apply again in the second round.

Proposed adoption of Regulation Section 1860.7 specifies the type of applications that school districts may submit. As stated in Education Code Section 17375(a), school districts may apply for new construction and/or retrofit funding for the purposes of providing full-day kindergarten classrooms. School districts may apply for funding with or without an advance release of funds. The Section specifies that in order to receive a grant without an advance release of funds, school districts must have received Division of the State Architect (DSA) and CDE final plan approval along with several additional criteria if the district is applying for a new construction grant that includes site acquisition. Grant requests with an advance release of funds for design and/or site acquisition costs will enable school districts that are lacking the required documentation and approvals to participate in the program and begin their project.

Proposed adoption of Regulation Section 1860.8 specifies that school districts must hold title to the real property where the proposed facilities are or will be located. Education Code Section 17375 does not provide the SAB the explicit ability to provide funding to school districts if their proposed projects are located on land, such as leased land, other than district-owned land.

Proposed adoption of Regulation Section 1860.9 sets forth the determination for a new construction apportionment. The applications that are funded with 2018 grant amounts will be determined at \$11,567 for each elementary school student. The per-pupil grant is determined by the School Facility Program (SFP) Regulations as stipulated in Education Code Section 17375(d). Applications that request, and the project includes, an automatic fire detection and alarm system will get an increase of \$14 per elementary school student, and applications that request an automatic sprinkler system will get an increase of \$194 per elementary school student. These grants are also provided by the SFP Regulations as stipulated in Education Code Section 17074.50. If a school district would like assistance with costs associated with site development, such as service site, off-site, utilities, and/or general site, they may request it on the Form SAB 70-01, *Application for Funding*. If approved for a site development grant, the school district will be awarded an additional 35 percent of the base grant. The site development increase of 35 percent was determined by an historical average of site development grants allocated to projects in the SFP. If a school district would like assistance with costs associated with multilevel construction, they may request it on the Form SAB 70-01, *Application for Funding*. If approved for multilevel construction, the school district will be awarded 12 percent of the base grant. The 12 percent of the base grant for multilevel construction is identical to that for new construction projects in the SFP. Small school districts will be awarded \$7,074 for the cost necessary for project assistance, if eligible, as determined in Education Code Section 17072.10(e). Project assistance is intended for costs associated with preparation and submission of FDKFGP funding applications. This Section also sets forth the process by which new construction grant funding will be determined. Education Code Section 17375(d) requires the SAB to allocate funds using the same maximum grant eligibility amounts that are used in the SFP Regulations, as set forth in Education Code Sections 17072.10 and 17072.11. Just like in the SFP, the grant amounts, excluding grants for site development and for multilevel

construction, will be adjusted annually based on the change in the Class B Construction Cost Index, which is approved every January by the SAB.

Proposed adoption of Regulation Section 1860.10 sets forth the process by which the amount for an additional grant for site acquisition will be determined. Education Code Section 17375(f) authorizes the SAB to allocate funding necessary to acquire property adjacent to the existing school site. The Site acquisition funding determination for FDKFGP projects is similar to what is used in the SFP Regulations. This Section specifies that the SAB will provide additional funding for site acquisition with the amount being the lesser of one half of the actual cost of the site or one half of the appraised value of the site acquired adjacent to an existing school site. Additionally, this Section specifies that the amount of acreage eligible for site acquisition funding for the FDKFGP will be reduced, on a prorated basis, by the percentage of the excess acreage of the site that exceeds the eligible acreage allowed for a kindergarten classroom project (0.3 acres) pursuant to Title 5, California Code of Regulations, Section 14010(a).

Proposed adoption of Regulation Section 1860.10.1 explains the requirements necessary for school districts to meet in order to obtain additional new construction funding for site acquisition costs. Specifically, school districts will have to certify on the Form SAB 70-01, *Application for Funding*, that the appraisal of the property to be acquired will be appraised in as is condition. This requirement must be met, but there are exceptions such as the site being appraised as if it were a clean site, safe of all toxic contaminants in compliance with appropriate guidelines and laws and if the site valuation included only proposed site improvements associated with grading the site to certain conditions specified in this section. School districts must also verify that consideration was made for net useable acreage and severance damages, appraisal services have been contracted, and that the appraisal complies with appropriate practices. These site acquisition guidelines are similar to those in the SFP.

Proposed adoption of Regulation Section 1860.10.2 sets forth the process of allocating a new construction additional grant for hazardous waste removal costs on an acquired site. Statute authorizes the SAB to allocate funding necessary to remove hazardous substances at a new school site. This Section determines that the grant amount will not be greater than 50 percent of one and one half times the value of the appraisal. However, exceptions to this grant calculation will be made for relocation costs and site other costs. The process for determining funding for hazardous waste removal costs on an acquired site is similar to the process used in the SFP Regulations. The main difference between the two is that the funding for the costs described in this section will be reduced on a prorated basis, as with the site acquisition grant.

Proposed adoption of Regulation Section 1860.10.3 sets forth the process of allocating a new construction additional grant for hazardous waste removal costs required on an existing school site by the Department of Toxic Substances Control (DTSC). Statute authorizes the SAB to allocate funding necessary to remove hazardous substances at an existing school site. This Section provides that school districts may only receive this additional funding if they are not requesting site acquisition funding and if their project will be adding facilities on an existing and functioning school site. This Section also specifies that funding for these costs will be equal to one half of the costs for preparation of the Phase One Environmental Site Assessment (POESA), the Preliminary Endangerment Assessment (PEA), and the Response Action (RA) as well as the costs to implement the RA. The process for determining funding for hazardous waste removal costs required on an existing school site mirrors the same process used in the SFP Regulations.

Proposed adoption of Regulation Section 1860.11 specifies the matching share requirement for school districts applying for a new construction grant. With the exception of school districts that receive financial hardship funding, school districts that apply for a new construction grant must provide 50 percent and the state will provide 50 percent, pursuant to Education Code 17375(b)(3).

Proposed adoption of Regulation Section 1860.12 sets forth the determination for a retrofit apportionment. The applications that are funded with 2018 grant amounts will be determined at \$4,404 for each elementary school student. The per-pupil grant is determined by the SFP Regulations as stipulated in Education Code Section 17375(d). Applications that request an automatic fire detection and alarm system will get an increase of \$143 per elementary student. These grants are also provided by the SFP Regulations as stipulated in Education Code Section 17074.50. If a school district would like assistance with costs associated with site development, such as service site, off-site, utilities, and/or general site, they may request it on the Form SAB 70-01, *Application for Funding*. If approved for a site development grant, the school district will be awarded 35 percent of the base grant. The site development increase of 35 percent was determined by an historical average of site development grants allocated to projects in the SFP. If a school district is retrofitting a 50-year old or older building, they may request an increase of 15 percent to the base grant to help upgrade the existing 50-year old utilities. The increase of 15 percent was determined by an historical average of 50-year old utilities grants provided for modernizing 50-year old or older buildings in the SFP. Small school districts will be awarded \$3,772 for the cost necessary for project assistance, if eligible, as determined in Education Code Section 17074.10(e). Project assistance is intended for costs associated with preparation and submission of FDKFGP funding applications. The grant amounts shall be adjusted annually based on the Class B Construction Cost Index, which is approved every January by the SAB, which is identical to the SFP.

Proposed adoption of Regulation Section 1860.13 specifies the matching share requirement for school districts applying for a retrofit grant. With the exception of school districts that receive financial hardship funding, school districts that apply for a retrofit grant must provide 40 percent and the state will provide 60 percent, pursuant to Education Code Section 17375(b)(3).

Proposed adoption of Regulation Section 1860.14 sets forth criteria for school districts applying for financial hardship, as allowed in Education Code Section 17375(b)(2)(A). If a school district is unable to meet the financial requirements for either all or a portion to match their share of the project with the state and can prove a financial hardship, then they may qualify for hardship assistance pursuant to Education Code Section 17075.10. This Section is identical to the financial hardship provisions as defined in the SFP Regulations. OPSC will review financial records of the school district to determine if the school district qualifies for financial hardship. The analysis will include all capital facility accounts, including but not limited to developer fees, Certificates of Participation, federal grants, bond funds either encumbered, unencumbered or authorized but not sold, etc. Any funds that have not been encumbered, either through contracts or otherwise, will be considered available funds for the matching share.

After the initial request for financial hardship is granted, no further encumbrances will be approved by OPSC. The school district must make a reasonable effort to fund its matching share of the project by demonstrating it is levying the maximum developer fee justified under law or an alternative revenue source equal to or greater than the developer fee otherwise justified under law at the time of the request for financial hardship, and the school district meets at least one of these criteria: The school districts current outstanding bonded indebtedness is at least 60 percent of the school districts total bonding capacity; the school district had a

successful registered voter bond election for at least the maximum amount allowed under Proposition 39, within the previous two years from the date of the request for financial hardship. The proceeds from the bond election must be used to fund the school districts matching share of the project; the school district at the time of the request for financial hardship has a total bonding capacity of \$5 million or less; the school district may be found to qualify for financial hardship if the SAB approves other reasonable evidence of financial hardship.

Once the school district has been notified by OPSC of the processing of the Form SAB 70-01, *Application for Funding*, the school district has 30 days to submit verification of financial hardship. If verification is not received by OPSC within 30 days of notification, the school district will be ineligible to receive a financial hardship grant and preference points.

Proposed adoption of Regulation Section 1860.15 specifies the funding priority based on a school district's preference points. Education Code Section 17375(b)(2) states that priority for FDKFGP grants will be given to school districts that qualify for financial hardship and/or that have a high population of pupils who are eligible for Free and Reduced-Price School Meals (FRPM). This Section creates a system of preference points in order to determine project funding order. A maximum of 80 preference points may be earned in each funding round for each school district. A school district's preference points will be calculated into two categories. Similar to the sliding scale currently used in the SFP for the Charter School Facilities Program, a sliding scale was created to determine the percentage of students a school district has eligible for FRPM. Points begin at four points for 60-65 percent of students eligible for FRMP, while 40 points will be earned if 100 percent of students within the school district qualify for FRPM. If a school district has been qualified for financial hardship by OPSC and is unable to contribute a portion or all of its matching share, the school district earns 40 points. Once OPSC has determined school districts' approved applications, school districts will be placed in a preference order based on the preference points earned. School districts will be ordered from highest to lowest points (80 points to zero points). If sufficient funds are available in that funding round, then all approved applications will be funded. If the amount of funding requested is more than the amount allocated for that round, then OPSC will begin with the highest preference point school district and fund their first priority project as stated on the Form SAB 70-01, *Application for Funding*. If two or more school districts have the same amount of preference points, then they will be placed into a lottery. The first school district pulled will have their first priority project funded, and OPSC will continue to the next school district with the same number of preference points. If OPSC has funded all school districts' first priority projects and funding still remains in that funding round, then OPSC will go back to the highest preference point school district and fund their remaining projects. As stated above, if two or more school districts have the same amount of preference points, they are placed into a lottery to determine who will go first in the funding order. Using the same funding order determined in the lottery to fund a school district's first priority project with the same number of preference points, each school district's second and subsequent priority projects (as identified by the school district on their Form SAB 70-01, *Application for Funding*), with the same number of preference points will be funded until funds are exhausted. If funds are still available, funding will continue to the next highest school district(s) based on total preference points. If the Board does not have sufficient funding to fully fund a school district's project, that school district has the option to accept the partial funding as full and final. If the school district chooses to decline the partial funding, then OPSC may offer the partial funding to the next approved application in the preference order.

Proposed adoption of Regulation Section 1860.16 specifies the process in which funds will be released to school districts with SAB-approved applications. School districts that have none or only a portion of the supporting documents required for a full fund release, may indicate that

they will need an advance for design or site acquisition. This advance of funds will help school districts move forward with their projects. If a school district is doing a new construction project with an advance release of funding, then they will receive 40 percent of the new construction base grant. If a school district is applying for a retrofit project, and they have none or only a portion of appropriate supporting documentation then they may apply for an advance release of funding of 25 percent of the base grant. These percentages are identical to those in the SFP Regulations for standard new construction and modernization projects. When a school district is requesting two percent for other site costs for site acquisition assistance, a grant agreement must be executed and received by OPSC. For funds other than two percent site other to be released for either site acquisition, design or site other, a grant agreement must be executed and received by OPSC.

OPSC must ensure that specific requirements have been met and those requirements are: the school district has entered into escrow for the site and the escrow must be valid, there has been a final appraisal of the site, the school district has either received contingent or final site approval from CDE, a valid Form SAB 70-02, *Fund Release Authorization*, has been received; for a new construction or retrofit project, all unreleased funds will be released once an executed full grant agreement has been received by OPSC, along with verification of these documents: the school district's applicable matching share has been deposited or expended by the school district for the project, with the exception of financial hardship projects which are exempt from this requirement (requirements for financial hardship may be found in 1860.14); the school district has entered into a binding contract(s) for the completion of the project; the plans and specifications for the project have been approved by DSA. If there has been site acquisition then a final appraisal of the site, the site received written final approval from CDE, and the school district has entered into escrow for the site. Finally, for all remaining funds to be released, all requirements above must be met, as well as a valid Form SAB 70-02, *Fund Release Authorization*, and grant agreement has been received by OPSC.

For school districts that request either a new construction or retrofit grant that did not request an advance release of funding, a valid Form SAB 70-02, *Fund Release Authorization*, must be submitted with all the required approvals within 180 days of apportionment. If a valid Form SAB 70-02, *Fund Release Authorization*, request is not submitted within 180 days, the apportionment will be rescinded. For school districts that receive an advance release of funding for either new construction or retrofit projects, a valid Form SAB 70-02, *Fund Release Authorization*, must be submitted to OPSC with 12 months of apportionment. If a valid Form SAB 70-02, *Fund Release Authorization*, is not received within 12 months, then the apportionment shall be rescinded and returned to the Program for reallocation. Subject to available funds, site acquisition grants shall be adjusted based on actual costs prior to the release of funds.

Proposed adoption of Regulation Section 1860.17 sets forth the requirement that an authorized school district representative must sign and submit a grant agreement prior to the release of any program funds. Education Code Section 17375(e) requires school districts who receive FDKFGP funding to execute and submit a grant agreement to OPSC before the release of any program funds.

Proposed adoption of Regulation Section 1860.18 sets forth reporting requirements that school districts receiving program funding must meet. A school district that has received funds in accordance with the program must submit an expenditure report at the completion of the project. School districts must submit a valid Form SAB 70-03, *Expenditure Report*. A project is considered complete when either of the following occurs: 1) When the notice of completion has been filed; all outstanding invoices, claims, and change orders have been satisfied and the

facility is currently in use by the school district; or 2) One year from the final fund release. A final expenditure report shall be due one year after the first expenditure report. OPSC will use the information provided on this form to ensure that expenditures made by the school districts for their FDKFGP projects comply with statute and other applicable State requirements pertaining to construction.

Proposed adoption of Regulation Section 1860.19 specifies how remaining funding may be used after project completion. Project savings and unexpended funds are the different types of remaining funds from FDKFGP projects. School districts that are not financial hardship are able to expend their project savings, including interest, that are not needed for the FDKFGP project on other high priority capital facility needs of the school district. Any savings not expended within one year of project completion must be returned to the State. School districts that are financial hardship that have any unexpended funds from the FDKFGP project and that were not spent on eligible expenditures, must be returned to the State upon completion of the project. Any interest earned on State funds for financial hardship grant funding that is not expended on eligible project expenditures must be returned to the State to help reduce the financial hardship contribution for that project. A school district is only required to return unexpended funds up to the amount of the financial hardship grant provided by the SAB.

Proposed adoption of Regulation Section 1860.20 specifies the audit process and requirements that school districts who receive FDKFGP funding will be subject to, as required in Education Code Section 17375(h). Projects will be subjected to an audit conducted pursuant to Education Code Section 41024 to ensure the expenditures incurred by the school district were made in accordance with Education Code Section 17375. School districts must retain all documents and records referring to the FDKFGP project and should be able to provide them if an auditor requests the documents. If an audit determines that funding was spent on ineligible expenditures, CDE shall ensure that the school district corrects the audit exception by implementing an equal penalty payment of funds.

Proposed adoption of Regulation Section 1860.21 sets forth the requirement for school districts receiving FDKFGP funds to certify that a restricted account within the school districts' general fund has been established for the purpose of providing on-going and major repair of its facilities.

Proposed adoption of Form SAB 70-01, *Application for Funding*, (which is incorporated by reference) will be used by school districts to apply for program funding. The form also serves as a certification from the district regarding compliance with requirements of the law and FDKFGP Regulations. School districts must submit this form during the funding rounds described in Regulation Section 1860.6. OPSC will use this form in order to collect the information necessary to calculate the amount of grants applicable to the project and to determine project funding order.

Proposed adoption of Form SAB 70-02, *Fund Release Authorization*, (which is incorporated by reference) will be used by school districts to request the release of funds when projects have received an apportionment by the SAB. The applicant will certify on this form that it has already submitted the signed grant agreement, or the signed grant agreement is accompanying the Form SAB 70-02. After an FDKFGP apportionment has been made by the Board, OPSC will release the apportioned funds once the school district completes and submits this form to OPSC. School districts who receive grants without an advance release of funds must submit this form with all required approvals within 180 days of apportionment. School districts who receive grants with an advance release of funds must then submit this form with all required approvals within 12 months of apportionment.

Adoption of the proposed Form SAB 70-03, *Expenditure Report*, will be used by school districts to report their project savings and unexpended funds. Expenditure reports must be submitted within one year of final fund release or at the completion of the FDKFGP project. A final savings report must be submitted within one year of the completion of the project. Financial hardship projects must submit their unexpended funds at the completion of their project. OPSC will use the information provided on this form to ensure that expenditures made by the school districts for FDKFGP projects comply with statute and other applicable State requirements pertaining to construction.

Proposed adoption of the *Grant Agreement* template (which is incorporated by reference) includes sections relevant to the FDKFGP for new construction and retrofit funding. It is the intent that the grant agreement will be entered into for every funding application that is processed; therefore, each grant agreement will contain the relevant project information. The grant agreements serve as binding documents and key resources that define the responsibilities of the state and school districts from the determination of the amount eligible state funding to the reporting of all project funds, including any savings achieved. This will ensure greater transparency and accountability for the program grants being awarded under FDKFGP.

After conducting a review, the SAB has concluded that these are the only regulations on this subject area (construction of and/or retrofit of existing school facilities for the sole purpose of providing kindergarten classrooms), and therefore, the proposed regulations are neither inconsistent nor incompatible with existing State laws and regulations. The proposed regulations are within the SAB's authority to enact regulations for the FDKFGP under Education Code Section 17373(g) and Government Code Section 15503.

#### Forms Incorporated by Reference

- *Application for Funding*, Form SAB 70-01, (New 10/18), referenced in Regulation Section 1859.2 and is incorporated by reference.
- *Fund Release Authorization*, Form SAB 70-02 (New 10/18), referenced in Regulation Section 1860.2 and is incorporated by reference.
- *Expenditure Report*, Form SAB 70-03 (New 10/18), referenced in Regulation Section 1860.2 and is incorporated by reference.
- *Grant Agreement*, (New 10/18), referenced in Regulation Section 1860.2 and is incorporated by reference.

#### IMPACT ON LOCAL AGENCIES OR SCHOOL DISTRICTS

The Executive Officer of the SAB has determined that the proposed regulations do not impose a mandate or a mandate requiring reimbursement by the State pursuant to Part 7 (commencing with Section 17500) of Division 4 of the Government Code. It will not require local agencies or school districts to incur additional costs in order to comply with the proposed regulations.

#### DISCLOSURES REGARDING THE PROPOSED REGULATORY ACTION

The Executive Officer of the SAB has made the following initial determinations relative to the required statutory categories:

- The SAB has made an initial determination that there will be no significant, statewide adverse economic impact directly affecting business, including the ability of California businesses to compete with businesses in other states.
- The SAB is not aware of any cost impacts that a representative private person or business would necessarily incur in reasonable compliance with the proposed action.
- There will be no non-discretionary costs or savings to local agencies.
- The proposed regulations create no costs to any local agency or school district requiring reimbursement pursuant to Section 17500 et seq., or beyond those required by law, except for the required district contribution toward each project as stipulated in statute.
- There will be no costs or savings in federal funding to the State.
- The proposed regulations create no costs or savings to any State agency beyond those required by law.
- The SAB has made an initial determination that there will be no impact on housing costs.

## RESULTS OF THE ECONOMIC IMPACT ANALYSIS

### *Impact to Businesses and Jobs in California*

The proposed regulations implement the FDKFGP, which allows school districts that lack the facilities to provide full-day kindergarten to apply for one-time grants to construct new school facilities or retrofit existing school facilities for the sole purpose of providing full-day kindergarten classrooms.

Many aspects of the FDKFGP are based on similarities in the Leroy F. Greene School Facilities Act of 1998 (School Facility Program), such as state share/district share funding of projects, Financial Hardship, site acquisition guidelines, etc. just to name a few. The School Facility Program is a \$42 billion voter-approved school facilities construction program. Although the FDKFGP is not the primary school facilities construction program, it does provide funding dedicated to construction of new facilities and/or retrofit of existing facilities for kindergarten classrooms only. In making these statements, manufacturing and construction-related industries may be competing for construction jobs for both the FDKFGP and the School Facility Program because of funds apportioned to school districts from both programs. The funds will be released once the school districts submit the fund release form and associated grant agreement. It is anticipated that there will be a positive impact to the State's economy and the potential for job creation because school districts are able to utilize these funds right away for their construction projects.

Therefore, the proposed regulations will most likely have a positive effect on the State's economy, creation of jobs, creation of new businesses, expansion of businesses, and will not eliminate jobs or eliminate existing businesses within California.

### *Benefits to Public Health and Welfare, Worker's Safety, and the State's Environment*

- The proposed regulations promote the State's general welfare, including protection of public health and safety, by assisting in increasing the State's infrastructure investment of school facilities.
- The proposed regulations also promote fairness and/or social equity by providing one-time general fund dollars to those school districts that may be able to construct new facilities or retrofit existing facilities in an effort to provide kindergarten facilities.

- There are benefits to health, safety, and welfare of California residents (school children and school faculty) because kindergarten facilities will be built stronger and safer.
- There are continued benefits to the health and welfare of California residents and worker safety. School districts utilize construction and trades employees to work on school construction projects and although these proposed regulations do not directly impact worker's safety, existing law provides for the availability of a skilled labor force and encourages improved health and safety of construction and trades employees through proper apprenticeship and training. Further, public health and safety is enhanced because a properly paid and trained workforce will build school construction projects that are higher quality, structurally code-compliant and safer for use by pupils, staff, and other occupants on the site.
- There is no impact to the State's environment from the proposed regulations.

The SAB finds the proposed regulations fully consistent with the stated purposes and benefits.

### EFFECT ON SMALL BUSINESSES

It has been determined that the proposed regulations will not have a negative impact on small businesses in the ways identified in subsections (a)(1)–(4) of Section 4, Title 1, CCR. Although the proposed regulations only apply to school districts for purposes of funding kindergarten classroom projects, the demand on the manufacturing and construction-related industries could potentially stimulate the creation of small businesses in these areas because of funds being released to school districts from both the FDKFGP and School Facility Program.

### SUBMISSION OF COMMENTS, DOCUMENTS AND ADDITIONAL INFORMATION

Any interested person may present statements, arguments or contentions, in writing, submitted via U.S. mail, e-mail or fax, relevant to the proposed regulatory action. Written comments submitted via U.S. mail, e-mail or fax must be received at OPSC no later than May 27, 2019. The express terms of the proposed regulations as well as the Initial Statement of Reasons are available to the public.

Written comments, submitted via U.S. mail, e-mail or fax, regarding the proposed regulatory action, requests for a copy of the proposed regulatory action or the Initial Statement of Reasons, and questions concerning the substance of the proposed regulatory action should be addressed to:

Lisa Jones, Regulations Coordinator

Mailing Address: Office of Public School Construction  
707 Third Street, 6<sup>th</sup> Floor  
West Sacramento, CA 95605

E-mail Address: [Lisa.Jones@dgs.ca.gov](mailto:Lisa.Jones@dgs.ca.gov)

Fax No.: (916) 375-6721

### AGENCY CONTACT PERSONS

General or substantive questions regarding this Notice of Proposed Regulatory Action may be directed to Lisa Jones at (916) 376-1753. If Ms. Jones is unavailable, these questions may be

directed to the backup contact person, Mr. Michael Watanabe, Chief of Administrative Services, at (916) 376-1646.

### ADOPTION OF REGULATIONS

Please note that, following the public comment period, the SAB may adopt the regulations substantially as proposed in this notice or with modifications, which are sufficiently related to the originally proposed text and notice of proposed regulatory activity. If modifications are made, the modified text with the changes clearly indicated will be made available to the public for at least 15 days prior to the date on which the SAB adopts the regulations.

The modified regulation(s) will be made available and provided to: all persons who testified at and who submitted written comments at the public hearing, all persons who submitted written comments during the public comment period, and all persons who requested notification from the agency of the availability of such changes. Requests for copies of any modified regulations should be addressed to the agency's regulation coordinator identified above. The SAB will accept written comments on the modified regulations during the 15-day period.

### SUBSTANTIAL CHANGES WILL REQUIRE A NEW NOTICE

If, after receiving comments, the SAB intends to adopt the regulations with modifications not sufficiently related to the original text, the modified text will not be adopted without complying anew with the notice requirements of the Administrative Procedure Act.

### RULEMAKING FILE

Pursuant to Government Code Section 11347.3, the SAB is maintaining a rulemaking file for the proposed regulatory action. The file currently contains:

1. A copy of the text of the regulations for which the adoption is proposed in strikeout/underline.
2. A copy of this Notice.
3. A copy of the Initial Statement of Reasons for the proposed adoption.
4. The factual information upon which the SAB is relying in proposing the adoption.

As data and other factual information, studies, reports or written comments are received they will be added to the rulemaking file. The file is available for public inspection at OPSC during normal working hours. Items 1 through 3 are also available on OPSC's Internet Web site at: <https://www.dgs.ca.gov/OPSC/Resources>, scroll down to "Laws and Regulations for State Allocation Board-Administered Programs," then click on "SFP Pending Regulatory Changes."

### ALTERNATIVES

In accordance with Government Code Section 11346.5(a)(13), the SAB must determine that no reasonable alternative it considered or that has otherwise been identified and brought to its attention would be more effective in carrying out the purpose for which the action is proposed, would be as effective and less burdensome to affected private persons than the proposed action, or would be more cost-effective to affected private persons and equally effective in implementing the statutory policy or other provision of law.

#### AVAILABILITY OF THE FINAL STATEMENT OF REASONS

Upon its completion, the Final Statement of Reasons will be available and copies may be requested from the agency's regulation coordinator named in this notice or may be accessed on the website listed above.